

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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KEVIN ARIAS,

Plaintiff,

-against-

CITY OF NEW YORK, et al.,

Defendants.

**ANSWER TO THE  
COMPLAINT ON BEHALF  
OF DEFENDANT CITY OF  
NEW YORK**

15 Civ. 3198 (VSB)

**JURY TRIAL DEMANDED**  
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Defendant City of New York (“City”)<sup>1</sup>, by its attorney, Zachary W. Carter, Corporation Counsel of the City of New York, as and for its answer to the Complaint, respectfully alleges, upon information and belief, as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “I” of the Complaint, except admits that plaintiff purports to proceed as stated therein, and that on February 17, 2014, defendant Christine Sanchez was employed by the City of New York, held the rank of police officer, and was assigned to the 23<sup>rd</sup> Precinct, and defendant Kenneth Mundy was employed by the City of New York, held the rank of police officer, and was assigned to the 23<sup>rd</sup> Precinct.

2. Denies the allegations set forth in Paragraph “II” of the Complaint, except admits that plaintiff purports to invoke the jurisdiction of this Court as stated therein.

3. Denies the allegations set forth in Paragraph “III” of the Complaint, except admits that plaintiff was arrested in New York County on February 17, 2014 by Officer Christine Sanchez, and that plaintiff was transported to Manhattan Central Booking, and denies knowledge

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<sup>1</sup> According to the docket sheet, the individuals named in the complaint as Kenneth Mundy and Christine Sanchez have not been served with process.

or information sufficient to form a belief as to the truth of the allegations regarding any incident at Central Booking, the disposition of plaintiff's criminal charges, and any medical treatment plaintiff received.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph "IV" of the Complaint.

5. Denies the allegations set forth in Paragraph "V" of the Complaint, except admits that plaintiff purports to seek the relief as stated therein.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE:**

6. The Complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE:**

7. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct and/or the intervening conduct of third parties and was not the proximate result of any act of defendant.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE:**

8. There was probable cause for plaintiff's arrest, detention, and prosecution.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:**

9. Defendant has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor has defendant violated any act of Congress providing for the protection of civil rights.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:**

10. To the extent that the Complaint alleges any claims arising under New York State law, such claims may be barred, in whole or in part, for failure to comply with New York General Municipal Law §§ 50-e, *et seq.*

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:**

11. At all times relevant to the acts alleged in the complaint, the duties and functions of the municipal defendant's officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant City is entitled to governmental immunity from liability.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:**

12. Punitive damages are not recoverable against the City of New York. Punitive damages cannot be received against any other defendants, and, if available, the amount of such damages shall be limited by applicable state and federal law, including due process and other provisions of law.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:**

13. Plaintiff's action may be barred, in whole or in part, by the doctrines of *res judicata* and *collateral estoppel*.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE:**

14. If plaintiff was stopped and/or searched by NYPD officers, there was reasonable suspicion and/or probable cause to do so.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE:**

15. To the extent that one or more defendants used any force, it was reasonable, justified, and necessary to accomplish defendants' official duties and to protect their own physical safety and the safety of others.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE:**

16. Plaintiff provoked any incident.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE:**

17. Plaintiff may have failed to mitigate damages.

**WHEREFORE**, defendants request judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
February 16, 2016

ZACHARY W. CARTER  
Corporation Counsel of the City of New York  
*Attorney for Defendant City of New York*  
100 Church Street  
New York, New York 10007  
(212) 356-2370

By:                     /s/                      
Philip S. Frank  
*Senior Counsel*  
Special Federal Litigation

cc: **BY FIRST CLASS MAIL**  
Kevin Arias  
720 Hunts Point Avenue  
Apt. 4C  
Bronx, NY 10474

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**ZACHARY W. CARTER**

*Corporation Counsel of the City of New York  
100 Church Street  
New York, New York 10007  
Of Counsel: Philip S. Frank  
Tel: (212) 356-2370*

*Due and timely service is hereby admitted.*

*New York, N.Y. ....,2016*

*..... Esq.*

*Attorney for .....*